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10/550,890

09/27/2005

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/550,890
Filing Date: September 27, 2005
Appellant(s): FOCKE ET AL.

Francis G. Plati, Sr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/21/2010 appealing from the Office action mailed 12/9/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2002/0179464	Focke et al.	12-2002
6,832,677	Bohdan	12-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al. (US 2002/0179464 A1; hereinafter Focke) in view of Bohdan (US 6832677 B2).

Regarding claims 18-20, Focke teaches a hinge-lid box for cigarettes or the like comprising a box part with box front wall (12), box rear wall (13), box side walls (14 and 15) and base wall (16), and a lid (11) which is pivotably attached to the box part and which comprises lid front wall (17), lid rear wall (18), lid side walls (20) and end wall (21), characterized by the following features; the hinge-lid pack with box part and lid is configured as having an octagonal cross-section across its entire dimensions (see

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Figure 5; Examiner considers the container to have eight distinct sides), a lateral region facing the box side walls and lid side walls is configured as having a cross-section that is trapezoid in shape (see Fig. 5; Examiner considers the end portions to have a trapezoidal cross sectional shape due to the three distinct sides), with converging material strips, namely legs (65 and 66), connected respectively to the box front wall, box rear wall and to the lid front wall and lid rear wall (see Fig. 6). Focke also teaches a collar made from a separate blank (see Fig. 7) conforming to the contour of the cross section of the container comprising marginal material strips (37 and 38) which abut the inner side of the rear box legs and lid legs (Col 4 lines 39-50).

Focke lacks teaching that said material strips or legs are directed at an angle of approximately 30 degrees to the box front wall and approximately 60 degrees to the transverse box side wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of 30 degrees to the front wall and 60 degrees to the side wall, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Focke, as modified above, discloses the claimed invention except for the cigarettes configured within the pack in its marginal region - in the region of the trapezoid-shaped cross section - a marginal transverse row with two adjacent cigarettes and a transverse row arranged adjacent thereto with three adjacent cigarettes, with the cigarettes of the transverse row preferably assuming a saddle position with respect to

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the cigarettes of the transverse row. Bohdan teaches a cigarette channeling device wherein cigarettes are placed within a package in a 2-3-2 configuration substantially similar to that of the instant application. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Focke's cigarette configuration in order to maximize the packing space within the package using Bohdan's channeling device (Bohdan; Col 2 lines 3-12). Examiner notes that with the modifications as described above that the leg strips would have a diameter greater than the diameter of one cigarette yet less than the aggregate diameter of two adjacent cigarettes.

Regarding claim 12, Focke, as modified above, teaches a container characterized in that the width of the side walls comprised of two overlapping side tabs (22-25) is somewhat less than the dimensions of two adjacent cigarettes, in particular of the marginal first transverse row.

Regarding claims 13 and 14, Focke, as modified above, teaches a container characterized by the angulations (47 and 48) formed as rounded corners, namely with a circular-shaped rounding formed by curvature strips (see Fig. 3), specifically by conforming to the contour and dimension of the cigarettes lying opposite the angulations.

Regarding claim 15, Focke, as modified above, teaches a container characterized in that base comer tabs (30) and lid comer tabs (31) are arranged as the continuation of interior box side tabs and lid side tabs (see Fig. 6), respectively, with the comer tabs being adapted to the contour of the base wall and end wall by means of

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corresponding exposed tab edges, or corresponding in their transverse dimensions to the width of their assigned side tabs.

(10) Response to Argument

Appellant's arguments filed 7/21/2010 have been fully considered but they are not persuasive. Appellant argues that the prior art fails to meet the limitations of the claimed invention:

(1) Appellant contends that no support exists for modifying the shape (i.e. dimensions) of Focke's hinge lid pack; and that Focke does not disclose an octagonal cross section.

-Examiner respectfully disagrees that Focke does not disclose an octagonal cross section (see Fig. 5; the erected cigarette carton indeed presents eight distinct sides). Examiner notes that the claims drawn to the dimensions of the instant invention state that said dimensions are "approximate", therefore inferring a range. Examiner maintains that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of approximately 30 degrees to the front wall and 60 degrees to the side wall in order to adequately fit the cigarettes contained within, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

(2) Appellant contends that no support exists for modifying Focke in view of Bohdan, since Bohdan discloses a cigarette arrangement for "oval packs".

-Examiner notes that it is old and well known in the art to change up the configurations of the contents of a container. Bohdan teaches the same configuration claimed in the instant application (Fig. 4) as well as an "oval shape" (Fig. 6). The motivation to modify Focke's configuration lies in the fact that Bohdan teaches that his configuration maximizes the packing space within a non-rectangular cross-section of the package (Bohdan; Col 2 lines 3-12). Furthermore, Examiner relies on Figure 6 to merely show the 2-3-2 formation, which Applicant contends as being novel; said 2-3-2 formation can be used for the Fig. 4 (octagonal cross-section) as well, as taught by Bohdan.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christopher Demeree/

Examiner, Art Unit 3782

Conferees:

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782

/Boyer D. Ashley/

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Supervisory Patent Examiner, Art Unit 3724